IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21782 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AMITBHAI SATISHBHAI BAROT - Petitioner(s)

Versus

COMMISSIONER OF POLICE & 2 - Respondent(s)

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Appearance :

MS BANNA S DUTTA for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 27/01/2006

ORAL JUDGMENT

1. The petitioner has filed habeas corpus petition under Article 226 of the Constitution of India challenging the order of detention dated 17.10.05 passed by the Commissioner of Police city of Vadodara

under the provisions of section 2 (b) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as “PASA”). The petition was filed on 21.10.05. The matter was placed for hearing on 26.10.05. This court has issued Rule returnable on behalf of the respondent. Mr. Pujari learned APP appears and he waives Rule on behalf of the respondents and therefore the matter is taken up for hearing for final disposal. It may be noted that as far final hearing board is concerned this Court has already disposed of the matter upto 16.10.05.

2. The learned advocate for the petitioner has invited my attention to the order dated 17.10.05 passed by the Police Commissioner Vadodara city under provisions of PASA Act. The learned advocate has also relied upon the order dated 17.10.05 of committal wherein the petitioner has been sent to Bhavnagar Jail.The petitioner has also relied upon the grounds furnished by the authority also on the same day to the petitioner. The learned advocate relied upon the said grounds.

3. Offence registered at Karelibaugh police station

on 24.5.05 vide CR NO. 268/05 for the offence punishable under section 66-B, 65 E of the Bombay Prohibition Act, storing 24 lts of country liquor valued at Rs. 480/-.

4. The second offence registered at Karelibaugh police station on 28.7.05 vide CR No. 397/05 punishable under section 66B, 65 E of the Bombay Prohibition Act, storing 39 lts of country liquor valued at Rs. 780/-.

5. The third offence registered at Karelibaugh police station on 30.9.05 vide CR No. 580/05 punishable under section 66B, 65 E of the Bombay Prohibition Act, storing 33 lts of country liquor valued at Rs. 660/-.

6. The learned advocate for the petitioner stated that even if all these offences are taken into totality of the facts there will not be any violation of public order and there will not be law and order situation in support of the same she has relied upon the judgement of the Supreme Court in Piyush Kantilal as well as Ashokkumar 2001 GLH. The learned advocate has also further relied that as far as the ground of

detention is concerned it has been stated that the petitioner is carrying on business of bootlegging and it is dangerous to public health however, the authority has not produced any chemical analyser or FSL wherein aforesaid illicit liquor has been examined and its report is to be record if i.e so the order is also vulnerable on the grounds of recent judgement.

7. Mr. Pujari relied upon the order of detention in this behalf and he has also produced the affidavit in reply filed by Deepak Swaroop, I.P.S Commissioner of Police. The authority has stated that the petitioner is illegally selling the liquor, which is injurious to health and also likely to create health hazard in general public. The petitioner is not disturbing the law and order, but disturbing the law and order. The order of detention is passed against him.

8. I have considered the judgement of the Apex Court in Piyush Kantilal division Bench judgement as well as the recent judgement by the Apex Court in this behalf.

9. Having heard learned counsel for the parties and perused the record, in my opinion, the detaining authority has passed the order of detention without there being any credible or cogent material about the detenu preferring bail application or his likelihood of getting enlarged on bail and subsequently continuing and indulging into such prejudicial, anti social and criminal activities again.

10. I have gone through the said judgements and orders and I am of the view that petition is allowed. The order of detention dated 17.10.05 is quashed and set aside. The detenu, Amitbhai Satishbhai Barot is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly with no order as to cost.

11. Direct service is permitted.

(K.M.MEHTA, J)

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